(1) (4) Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR(C.G.)

M.A.(C) No. 575 OF 2006

(APPEAL VALUED AT Rs 2,96,000 /-)

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

APPELLANT
(NON-APPLICANT NO.3) : The New India Assurance Company Limited, Near Jhankar Talkies, Jaipur Road, Jagadalpur, Distt. Bastar(CG). Through: Its, Divisional Manager, Divisional-Office, IInd Floor, Rama Trade Centre, Above UTI Bank, Opp. Rajiv Plaza, Bus Stand Road, Bilaspur (CG).

P.R. No. 36235/06
Presented by Shri Dashrath Singh Gurjar
dated 27/11/06

VERSUS

RESPONDENTS
(APPLICANT) :1. Smt. Putul Vishwas w/O Vikash Vishwas @ Angrej , aged -37 years, caste-Namshudra Bengali, R/O-Adawal(Orana Camp), Tah.-Jagadalpur, Distt.-Bastar(CG).

(NON-APPLICANT NO.1) :2. **Arun Kumar Khatri** S/O- Meghraj Ji Khatri, R/O-Kumharpara Santoshi ward, Jagdalpur, Distt.-Bastar (CG).

(NON-APPLICANT NO.2) :3. **Tarachandra Khatri** S/O- Not known, R/O-Main road, Jagadalpur, Distt.-Bastar (CG).

(NON-APPLICANT NO.4) :4. **Vikash Vishwas @ Angrej,** R/O-Adawal(Orana Camp), Tah.-Jagadalpur, Distt.-Bastar(CG).

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

मामला क्रमांक M.A.C.) No. 515/... **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

06/12/2006

Shri Dashrath Gupta, counsel for the appellant.

Heard.

This Miscellaneous Appeal is directed against the award dated 30.08.2006 passed in Claim Case No. 93/2006 by IV Additional Motor Accident Claims Tribunal (FTC), Bastar, Jagdalpur (C.G.) whereby in a case of accidental death of a girl aged about 17 years, a compensation of Rs.2,96,000/- has been awarded.

Shri Dashrath Gupta, learned counsel for the appellant does not dispute the fact that the offending vehicle was insured by the appellant and that the appellant failed to establish breach of terms of the policy of insurance. Learned counsel for the appellant argued this appeal only on the question of quantum. It was also not disputed that correct multiplier applicable to this case is 16 whereas multiplier 12 has been applied by the learned M.A.C.T. The only point urged by the learned counsel for the appellant is that the learned Motor Accident Claims Tribunal erred in computing the loss of dependency and determined the monthly income of the deceased at Rs.3000/- since the deceased only assisted her mother in running the hotel business. It was also urged that the learned Tribunal ought to have assessed loss of dependency only at 1/3rd of Rs.2,88,000/- in view of the fact that the deceased would have got married at the age of around 25 years. Reliance was placed on *Halki Bai & another Vs. Managing Director, Rajasthan State Road Transport Corporation & another* 2004 (3) T.A.C., 821 (M.P.)

Having considered the submissions, I have perused the impugned award.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(24)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is not disputed that the deceased was aged 17 years and was running a hotel. On a query, learned counsel for the appellant admitted that in cross-examination of the claimant, it was not asked that the deceased was only assisting her mother in running hotel business. It is also not disputed that the insurer did not lead any evidence independently to rebut the testimony of the claimant and to prove that the deceased was only assisting her mother in the hotel business. The contention of the learned counsel for the appellant is therefore, unacceptable. In any case, I am of the considered opinion that it cannot be accepted that a young girl aged 17 years who was running a hotel would not be earning even a meager sum of Rs.3000/- per month. In this view of the matter, the finding recorded by the learned M.A.C.T. assessing the monthly income of the deceased at Rs.3000/- cannot be faulted with.

So far as the loss of dependency is concerned, learned M.A.C.T. has already applied a lesser multiplier than the multiplier applicable. The average age of the parents works out to be 36 and the multiplier applicable is 16 whereas the learned M.A.C.T. has applied multiplier of 12. Learned M.A.C.T. has, in the peculiar facts and circumstances of this case, also rightly deducted one-third of the monthly dependency towards personal expenses and assessed the loss of dependency by multiplying it by 12, In this view of the matter, I find no substance in the contention raised by the learned counsel for the appellant that loss of dependency could be only 1/3rd of Rs.2,88,000/-.

It is also noteworthy that the insurer had filed an application under Section 170 of the Motor Vehicles Act before the M.A.C.T. which granted permission to the insurer to contest the claim on all grounds without satisfying itself as to the existence of any of the conditions enumerated in

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –3–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

clauses (a) or (b) of Section 170. In fact the learned M.A.C.T. ought to have applied its mind and ought to have given reasons to conclude that there was collusion between the person making the claim and the person against whom the claim is made or that the person against whom the claim is made had failed to contest the claim. A copy of the order dated 30.8.2006 clearly goes to show that no reason was assigned and both driver and owner of the offending vehicle were contesting parties. In this view of the matter, I am of the considered opinion that the learned M.A.C.T. ought not to have permitted the insurer to contest the claim beyond grounds permissible under sub-section (2) of Section 149 of the Motor Vehicles Act.

Be that as it may, I do not find any merit in the contentions raised by the learned counsel for the appellant. This miscellaneous appeal is accordingly dismissed at the Stage of admission.

Consequently, M.(C.).P. No. 2148/2006 for staying the execution proceedings also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

P.T.O.

9/13/11